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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SELTZER CAPLAN MCMAHON VITEK, a
12 Law Corporation,

13 Plaintiff,

14 vs.

15 DAMON ABNOS, an individual,

16 Defendant.
17

CASE NO. 08cv0201 DMS (WMc)

**ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND**

18 This matter comes before the Court on Plaintiff's motion to remand the matter to state court.
19 The motion is granted.

20 **I.**

21 **BACKGROUND**

22 In November, 2003, Defendant Damon Abnos (Abnos) hired Plaintiff Seltzer Caplan
23 McMahon Vitek (SCMV), a law firm, to represent him in his divorce proceedings against his wife.
24 In October, 2004, he terminated his engagement SCMV and on April 10, 2006, filed a malpractice
25 lawsuit against SCMV in state court. On November 16, 2006, the parties stipulated to, and the court
26 ordered, binding arbitration. At that time, the state court also stayed the action at law pending the
27 conclusion of arbitration. On June 7, 2007, Abnos filed a "request for dismissal" in which both parties
28 agreed to dismiss the complaint. (Maiorano Decl. Ex. 2). In arbitration, SCMV was awarded more than

1 \$100,000 (Mot. at 7). On January 8, 2008, SCMV filed a Petition to Confirm the Arbitration Award
 2 in state court under the same docket number as the original case. (GIC 864098). On January 10, 2008,
 3 Abnos filed a Petition to Vacate the Arbitration Award in federal court (Case No. 08 CV 0058-DMS-
 4 WMc). On February 1, 2008, Abnos removed SCMV's January 8, 2008 petition to federal court.
 5 SCMV now moves to remand.

6 II.

7 LEGAL STANDARD

8 "[A]ny civil action brought in a State court of which the district courts of the United States
 9 have original jurisdiction, may be removed *by the defendant or the defendants*, to the district court of
 10 the United States for the district and division embracing the place where such action is pending." 28
 11 U.S.C. § 1441 (emphasis added). A federal court "strictly construe[s] the removal statute against
 12 removal jurisdiction. Federal jurisdiction must be rejected if there is any doubt as to the right of
 13 removal in the first instance. *Gaus v. Miles, Inc.* 980 F.2d 564, 566 (9th Cir. 1992). "The strong
 14 presumption against removal jurisdiction means that the defendant always has the burden of
 15 establishing that removal is proper." *Id.*

16 III.

17 DISCUSSION

18 SCMV argues Abnos may not remove this action because he is not a defendant in the state
 19 court action. Indeed, the record indicates he is the Plaintiff in the action, as he brought the original
 20 lawsuit in California state court and SCMV filed its petition to confirm the arbitration award in the
 21 same action under the same case number. However, Abnos argues his voluntary dismissal of the
 22 complaint divested the state court of jurisdiction over the entire matter, including Defendant's petition
 23 to confirm the arbitration award. (Opp. at 6). Accordingly, he argues SCMV's petition should be
 24 treated as a separate proceeding in which Abnos is a defendant. As the parties are diverse and the
 25 amount in controversy is met, Abnos argues he may therefore remove the petition. The Court
 26 disagrees.

27 California Code of Civil Procedure § 1285 permits "[a]ny party to an arbitration in which an
 28 award has been made" to "petition the court to confirm, correct, or vacate the award." "[T]he court in

1 which [a petition filed under this title] was filed retains jurisdiction to determine any subsequent
 2 petition involving the same agreement to arbitrate and the same controversy, and any such subsequent
 3 petition shall be filed in the same proceeding.” Cal. Civ. Proc. Code § 1292.6. After Abnos filed his
 4 civil complaint, SCMV filed a petition to compel arbitration. Upon completion of the arbitration,
 5 SCMV filed the instant petition to confirm the arbitration award in the same action as required by
 6 California Code of Civil Procedure § 1292.6. In that action, Abnos remained the plaintiff, and SCMV
 7 remained the defendant.

8 However, Abnos cites *Brock v. Kaiser Found. Hosps.*, 10 Cal. App. 4th 1790, 1797 (1992),
 9 for the proposition that when he voluntarily dismissed his complaint, the state court was divested of
 10 jurisdiction over the entire matter, and any subsequent petition to confirm arbitration must be treated
 11 as a separate proceeding in which Abnos is a defendant. Abnos’ reliance on *Brock* is misplaced. *Brock*
 12 instead emphasizes that arbitration proceedings and actions at law initiated by a complaint are “two
 13 separate proceedings over which the trial court had separate fonts of jurisdiction.” *Id.* at 1796. Once
 14 a court grants the petition to compel arbitration, it retains some jurisdiction over each proceeding: (1)
 15 “vestigial jurisdiction over the action at law” which “consists solely of making the determination, upon
 16 conclusion of the arbitration proceedings, of whether there was an award on the merits (in which case
 17 the action at law should be dismissed because of the res judicata effects of the arbitration award) or
 18 not;” and (2) “separate, limited jurisdiction over the contractual arbitration...to determine any
 19 subsequent petition involving the same agreement to arbitrate and the same controversy.” *Id.* Indeed,
 20 once the matter was sent to arbitration, “[b]arring a subsequent stipulation not to arbitrate, the judicial
 21 system’s future involvement was limited merely to confirming, correcting, or vacating any arbitration
 22 award.” *Byerly v. Sale*, 204 Cal. App. 3d 1312, 1315 (1988). The *Brock* court emphasized “any such
 23 subsequent petition shall be filed in the same proceeding.” *Brock*, 10 Cal. App. 4th at 1796. (emphasis
 24 in original, citing Cal. Civ. Proc. Code § 1292.6). Therefore, while dismissing the complaint might
 25 have affected the state court’s jurisdiction to determine whether adjudication resulted in an award on
 26 the merits for purposes of dismissing the action at law, it did not affect the state court’s jurisdiction
 27 to adjudicate subsequent petitions involving the agreement to arbitrate.

28 As it is clear dismissing a complaint does not divest a state court of jurisdiction over

1 subsequent petitions related to arbitration, Abnos' original action was the proper forum for SCMV to
2 file its petition to confirm the arbitration award. Abnos was the Plaintiff in that action. Since the plain
3 language of 28 U.S.C. § 1441 permits only defendants to remove cases to federal court, Abnos has
4 failed to meet his burden of demonstrating removal is proper. The action is therefore remanded.

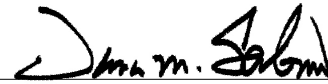
5 **IV.**

6 **CONCLUSION**

7 For the foregoing reasons, SCMV's motion is granted, and the action is remanded to state court
8 for resolution.

9 **IT IS SO ORDERED.**

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11 DATED: April 21, 2008



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13 HON. DANA M. SABRAW
14 United States District Judge
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